

CT System

Service of Process Transmittal Form

Boston, Massachusetts

09/20/2004

Via Federal Express (2nd Day)

TO: Chad F Hesse Corp. Csl. & Asst. Secretary
Diebold, Incorporated
5895 Mayfair Road
North Canton, OH 44720-1597

Original to: Mark Tucker
Copy to: W.W.Dettinger

Janice Jacobs
September 22, 2004

RE: **PROCESS SERVED IN MASSACHUSETTS**

FOR Diebold, Incorporated Domestic State: Oh

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: Eleanor Kerrigan, et al., Plff. vs John W. Curran, et al. including Diebold Inc., Defi.
2. DOCUMENT(S) SERVED: Summons, Complaint and Jury Demand
3. COURT: Commonwealth of Massachusetts, Middlesex Superior Court
Case Number 2004-03153-E
4. NATURE OF ACTION: *Quids Quided*
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Boston, Massachusetts
6. DATE AND HOUR OF SERVICE: By Process server on 09/20/2004 at 10:30
7. APPEARANCE OR ANSWER DUE: Within 20 Days
8. ATTORNEY(S): Andrew J. Schultz, Esq.
Law Offices of Andrew J. Schultz, PC
50 Mall Road
Ste. 208
Burlington, MA 01803

9. REMARKS: i-Note sent 09/20/2004 to JACOBS.J@DIEBOLD.COM; Note sent 09/20/2004 to HESSEC@DIEBOLD.COM

R E C E I V E D
SEP 22 2004

DIEBOLD LEGAL DEPT

CC: Janica Jacobs
Diebold, Incorporated
5895 Mayfair Road
North Canton, OH 44720-1597

SIGNED CT Corporation System
PER Yvette Concepcion
ADDRESS 101 Federal Street
Boston, MA 02110
SOP WS 0006822343

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

NO. 3/30 P. 2/13

SEP. 23. 2004 9:45AM 133049068223

TORT — MOTOR VEHICLE ACCIDENT
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. 2004-03153-E

MIDDLESEX, ss
[seal]

Eleanor Kerrigan
Sean Kerrigan, Plaintiff(s)

John W. Curran
Diebold, Inc.
Crawford & Company, Defendant(s)

SUMMONS

To the above-named Defendant: Diebold, Inc.

You are hereby summoned and required to serve upon Andrew J. Schultz, Esq.
..... plaintiff's attorney, whose address is .. 50 Mall Road, Suite 209
Burlington, MA 01803, an answer to the complaint which is herewith
served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you
fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at 40 Thorndike Street
Cambridge, MA 02141 either before service upon plaintiff's attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DelVecchio, Esquire, at Cambridge, MA
the 8th day of ... September
....., in the year of our Lord 2004

9/10/04 *Suzanne V. DelVecchio*
Edward J. Sullivan
Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DIVISION
MIDDLESEX SUPERIOR COURT
CAMBRIDGE DIVISION

MIDDLESEX, ss

DOCKET NO. 2004-03153-E

ELEANOR J. KERRIGAN
SEAN J. KERRIGAN,
A minor child, by his parent and next best friend
Eleanor J. Kerrigan

Plaintiffs

v.

JOHN W. CURRAN
DIEBOLD, INC.
CRAWFORD & COMPANY,

Defendants

COMPLAINT & JURY DEMAND

Parties

THE LAW OFFICES OF
DREW J. SCHULTZ, P.C.

50 Mall Road,
Suite 209
Methuen, MA 01840
TEL: 781.229.0440
FAX: 781.229.0483

1361 Elm Street,
Suite 408B
Manchester, NH 03101
TEL: 603.622.4531
FAX: 603.622.4539

390 Main Street,
Suite 543
Worcester, MA 01608
TEL: 508.767.0700
FAX: 508.767.0660

1. The Plaintiff, Eleanor Kerrigan, hereinafter referred to as "Plaintiff Eleanor Kerrigan", is an individual with a principal place of residence of 33 Draper Street, Medford, MA 02155.
2. The Plaintiff, Sean J. Kerrigan, hereinafter referred to as "Plaintiff Sean Kerrigan", is an individual with a principal place of residence of 33 Draper Street, Medford, MA 02155.
3. Plaintiff Sean Kerrigan is a minor due to his disability.

4. The Plaintiff Sean Kerrigan's parent and next best friend is Eleanor J. Kerrigan, the mother of Plaintiff Sean Kerrigan who also has a principal place of residence at 33 Draper Street, Medford, MA 02155.

5. The Defendant, John W. Curran, hereinafter referred to as "Defendant Curran", is an individual with a last known address of 15 Reservoir Drive, Queensbury, NY 12804.

6. The Defendant, Diebold, Inc., is a corporation licensed to do business within the Commonwealth of Massachusetts with a resident agent located at 101 Federal Street, Boston, MA 02110.

7. The Defendant, Crawford & Company, is a corporation licensed to do business in the Commonwealth of Massachusetts with an office located at 110 Second Avenue, Needham, MA 02492.

Count I - Defendant Curran's Negligence

8. On November 14, 2002, Defendant Curran was an operator of a motor vehicle on Salem Street in Medford, Massachusetts.

9. On November 14, 2002, Defendant Curran had a duty to exercise reasonable care in the operation of his motor vehicle on a public way.

10. On November 14, 2002, Defendant Curran breached his duty to operate his motor vehicle in a reasonable manner, striking Plaintiff Eleanor Kerrigan while she was standing in a crosswalk performing her duties as a crossing guard.

11. As a direct and proximate cause of Defendant's Curran's failure to exercise reasonable care, Plaintiff Eleanor Kerrigan sustained severe personal injuries, caused her to incur great medical expenses, caused her to incur extensive lost wages, and caused her to suffer great pain of body and anguish of mind.

IN LAW OFFICES OF
REW J. SCHULTZ, P.C.

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Lynn, MA 01803
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390 Main Street,
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FAX: 508.767.0660

Count II – Defendant Diebold, Inc.'s Negligence

12. The Plaintiff Eleanor Kerrigan reasserts the allegations in Paragraphs 1-11.
13. At the time of the incident referenced in paragraph 9, Defendant Curran was acting in the course and scope of his employment as an employee of Defendant Diebold, Inc.
14. Defendant Diebold, Inc. is liable for the negligence of Defendant Curran via the doctrine of Respondeat Superior.
15. At the time of the accident referenced in paragraph 10, Defendant Curran was operating a company vehicle that was under the control of Defendant Diebold.
16. On November 14, 2002, Defendant Diebold, Inc. had a duty to entrust its vehicles with safe drivers and negligently breached its duty by entrusting its vehicle to Defendant Curran.
17. Defendant Diebold, Inc. had a duty to use reasonable care in hiring its employees who operate company vehicles and negligently breached its duty by hiring Defendant Curran.
18. Defendant Diebold, Inc. had a duty to use reasonable care in retaining its employees who operate company vehicles and negligently breached its duty by retaining Defendant Curran.
19. As a direct and proximate cause of Defendant's Diebold, Inc.'s negligence, Plaintiff Eleanor Kerrigan was stricken by Defendant Diebold, Inc.'s vehicle which severely injured her.
20. As a direct and proximate cause of Defendant's Diebold, Inc.'s failure to exercise reasonable care, Plaintiff Eleanor Kerrigan was caused to incur great medical expenses, caused her to incur extensive lost wages, and caused her to suffer great pain of body and anguish of mind.

Count III – Plaintiff Sean Kerrigan's Loss of Consortium

THE LAW OFFICES OF
REW J. SCHULTZ, P.C.

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Hingham, MA 01803
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21. The Plaintiff Sean Kerrigan reasserts the allegations in Paragraphs 1-20.
22. Plaintiff Sean Kerrigan suffers from cerebral palsy and is mentally retarded.
23. As a result of his disability, Plaintiff Sean Kerrigan is a minor, dependant upon his mother for her services, society, companionship, and care.
24. As a direct and proximate cause of Defendant Curran and Defendant Diebold Inc.'s negligence and the injuries sustained by Plaintiff Eleanor Kerrigan as referenced in Paragraphs 1-20, Plaintiff Sean Kerrigan suffered a loss of his mother's services, society, companionship, and care.

**Count IV - Defendant Diebold, Inc.'s and Defendant Crawford & Company's Violation of
Massachusetts General Laws Chapter 93a and Chapter 176d**

25. The Plaintiffs Sean Kerrigan and Eleanor Kerrigan reassert the allegations in Paragraphs 1-24.
26. Defendant Crawford & Company is the agent for Defendant Diebold, Inc. in this matter.
27. Promptly following the incident referenced in Paragraph 10, Plaintiff's reported claims against Defendant Curran and Defendant Diebold, Inc. to Defendant Crawford & Company.
28. Defendant Diebold, Inc. is self insured with respect to all settlement offers made to date in this action.
29. Defendant Crawford & Company and Defendant Diebold, Inc. are acting as insurers licensed to do business in the Commonwealth of Massachusetts.
30. Defendants Crawford & Company and Diebold, Inc. pursuant to Massachusetts General Laws, Chapter 176d, Section 3 (9), are required to effectuate prompt, fair, and equitable settlements of claims in which liability become reasonably clear.
31. A detailed settlement brochure and demand was forwarded by the Plaintiff's to Crawford & Company on January 14, 2004 and no reply was provided for many months.

THE LAW OFFICES OF
BREWSTER J. SCHULTZ, P.C.

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Burlington, MA 01803
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32. A further settlement demand letter was sent to Defendant Crawford & Company on April 21, 2004 referencing MGL Chapter 176d and Defendant Crawford & Company and Defendant Diebold failed to make a reasonable settlement offer.

33. The parties attempted to mediate this matter on June 15, 2004 and Defendants Crawford & Company and Diebold, Inc. acknowledged liability is not at issue but failed to make a reasonable settlement offer.

34. Additional and subsequent demand letters requesting a reasonable settlement offer were forwarded to Defendant Crawford & Company and Defendant Diebold, Inc. on June 17, 2004.

35. Defendant Crawford & Company and Defendant Diebold, Inc., have failed to make a reasonable settlement offer even though liability has been admitted, which is a clear violation of Massachusetts General Laws, Chapter 176d, Section 3 (9) and their actions have caused Plaintiff Eleanor Kerrigan and Plaintiff Sean Kerrigan to incur other financial hardships.

WHEREFORE, Plaintiff Sean Kerrigan and Plaintiff Eleanor Kerrigan, demand judgment against Defendant Diebold, Inc. and Defendant Curran jointly and severally for their damages together with interest, costs, attorney fees, and all other relief this court deems proper.

WHEREFORE, Plaintiff's Sean and Eleanor Kerrigan, demand judgment against Defendant Crawford & Company and Defendant Diebold, Inc. as follows:

- I. For compensation for injuries caused by Defendant Curran and Defendant Diebold as described above.
- II. For treble damages as provided by Massachusetts General Laws, Chapter 93a, Section 9 (3) and Massachusetts General Laws, Chapter 176d, Section 3 (9);
- III. For attorney fees, costs and interest.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
By Plaintiff's Attorney,



Andrew J. Schultz, Esq.
BBO #650536
Law Offices of Andrew J. Schultz, P.C.
50 Mall Road, Suite 209
Burlington, MA 01803
(781) 229-0440
August 10, 2004

**CIVIL ACTION
COVER SHEET**Sup. Court Dept. of 12
County: Middlesex

PLAINTIFF(S)

Eleanor J. Kerrigan, Sean J.
Kerrigan

DEFENDANT(S)

John W. Curran, Diebold, Inc.,
Crawford & Company

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Andrew J. Schultz, Esq.
50 Mall Road, #209, Burlington, MA
Card of Bar Overseers number: 650536 781-229-0440

ATTORNEY (If known)

Edward D. Shoulkin, Esq., Taylor, Duane,
Barton & Gilmon, LLP, 111 Devonshire St.
Boston, MA 02109

Origin code and track designation

Place an x in one box only:

- ☐ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.

TYPE OF ACTION (specify) TRACK

IS THIS A JURY CASE?

803

Negligence, Personal Injury (F) (X) Yes () No
Motor vehicle.

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

Documented medical expenses to date:

1. Total hospital expenses	\$ 39,583.67.
2. Total Doctor expenses	\$.6,129.00.
3. Total chiropractic expenses	\$ 0.00.
4. Total physical therapy expenses	\$ 20,643.00.
5. Total other expenses (describe) .. ambulance	\$.1,559.50.
	Subtotal \$ 67,915.17.
	\$ 13,358.10.

Documented lost wages and compensation to date

Documented property damages to date

Reasonably anticipated future medical and hospital expenses

Reasonably anticipated lost wages

Other documented items of damages (describe)

Loss of consortium

Brief description of plaintiff's injury, including nature and extent of injury (describe)

Pain and suffering from multiple fractures with resulting
permanency for remainder of life.

\$ 750,000.00

TOTAL \$ 994,639.27

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.

DATE: 8/10/04

Signature of Attorney of Record

Commonwealth of Massachusetts
The Trial Court
Superior Court Department
Cambridge Division
Docket No.

UNIFORM COUNSEL CERTIFICATION FORM

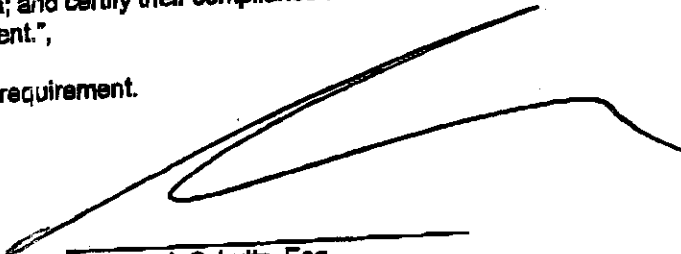
Case Caption: Eleanor Kerrigan and Sean Kerrigan v. John W. Curran, Diebold, Inc. and Crawford & Company

I am attorney-of-record for: Eleanor Kerrigan and Sean Kerrigan
plaintiffs in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18)
which states in part:

"...Attorneys shall provide their clients with this information about court-connect dispute
resolution services; discuss with their clients the advantages and disadvantages of the
various methods of dispute resolution; and certify their compliance with this requirement
on the civil cover sheet or its equivalent."

I hereby certify that I have complied with this requirement.



Andrew J. Schultz, Esq.
BBO #850536
Law Offices of Andrew J. Schultz, P.C.
50 Mall Road
Suite 209
Burlington, MA 01803
781-229-0440

Dated: August 10, 2004

INSTRUCTIONS:

Plaintiffs/Petitioner's counsel shall file this document at the time his/her initial pleading is filed. All other counsel
shall file it within thirty (30) days of his/her initial entry into the case whether by answer, motion, appearance slip or
other pleading.

CCF (3/00)

The Superior Court

CIVIL DOCKET # MICV2004-03153-E

RE: Kerrigan et al v Curran et al

TO: Andrew J. Schultz, Esquire
 Law Offices Of Andrew J. Schultz,
 50 Mall Road, Suite 209
 Burlington, MA 01803

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION**DEADLINE**

Service of process made and return filed with the Court	11/09/2004
Response to the complaint filed (also see MRCP 12)	01/08/2005
All motions under MRCP 12, 19, and 20 filed	01/08/2005
All motions under MRCP 15 filed	01/08/2005
All discovery requests and depositions completed	06/07/2005
All motions under MRCP 56 served and heard	07/07/2005
Final pre-trial conference held and/or firm trial date set	08/06/2005
Case disposed	10/05/2005

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session "E" sitting in Rm 7B (Cambridge) Middlesex Superior Court.

Dated: 08/12/2004

Edward J. Sullivan
 Clerk of the Court

BY: Arthur B. Sutherland
 Assistant Clerk

Location: Rm 7B (Cambridge)
 Telephone: 617-494-4010 EXT 4254

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130